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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

First Named Applicant: Kitsukawa)	Art Unit: 2614
)	
Serial No.: 09/802,638)	Examiner: Manning
)	
Filed: March 9, 2001)	50P4370
)	
For: SYSTEM AND METHOD FOR ALLOWING)	January 25, 2006
ACCESS TO WEB SITES USING INTERACTIVE)	750 B STREET, Suite 3120
TELEVISION)	San Diego, CA 92101
)	

APPEAL BRIEF

Commissioner of Patents and Trademarks

Dear Sir:

This brief is submitted under 35 U.S.C. §134 and is in accordance with 37 C.F.R. Parts 1, 5, 10, 11, and 41, effective September 13, 2004 and published at 69 Fed. Reg. 155 (August 2004). This brief is further to Appellant's Notice of Appeal filed herewith.

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(1) Real Party in Interest

The real parties in interest are Sony Electronics, Inc. and Sony Corp.

(2) Related Appeals/Interferences

Appeals have been filed in serial nos. 09/834,511, 09/840,327, 09/839,000, and 09/840,437 that may tangentially be related to this appeal.

(3) Status of Claims

Claims 1, 2, 4-7, and 9-14 are pending and finally rejected, which rejections are appealed, and Claims 3 and 8 have been canceled.

(4) Status of Amendments

No amendments are outstanding.

(5) Summary of Claimed Subject Matter

As an initial matter, it is noted that according to the Patent Office, the concise explanations under this section are for Board convenience, and do not supersede what the claims actually state, 69 Fed. Reg. 155 (August 2004), see page 49976. Accordingly, nothing in this Section should be construed as an estoppel that limits the actual claim language.

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Claim 1 recites a method for allowing access to a Web site (14, figure 1; page 5, lines 5 and 6) using an interactive television (22, figure 1; page 6, line 8) that includes establishing an access restriction table (table 1, page 13) which includes plural virtual channels correlating to respective Web site addresses. The access restriction table is made accessible to the television. The method includes selectively enabling a consumer to access a Web site address using the interactive television by selecting a virtual channel, and setting a restriction flag (page 4, lines 9-11) on at least one entry in the table. The flag indicates whether content associated with the entry can be displayed.

Claim 2 sets forth a method for correlating Web pages to virtual channels for display thereof on a television, supra. The method includes generating a table, supra, correlating plural Web addresses with respective virtual channel numbers, and receiving a user selection of a virtual channel number. The table is accessed to selectively retrieve the address associated with the virtual channel number, such that content associated with the address can be displayed on the television. At least one virtual channel number is a telephone number; table 1, supra.

Claim 7 recites an interactive television system that includes a server (18, figure 1; page 5, lines 12 and 13) storing Internet addresses that are associated with respective virtual channel numbers. An interactive television, supra, is also provided, and the server includes a table, supra, for selectively allowing access to at least one Web site using the interactive television by selecting a virtual channel number. The ITV includes means (e.g., the server executing the logic of figure 6, page 14, second full paragraph) for recording an accessing of a Web site to render at least one access record containing billing information.

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Claim 12 recites a method for billing for access to virtual channels which includes providing a correlation table, supra stored in an interactive television, supra. The correlation table correlates virtual channels with respective content sources. For at least one virtual channel, an access record is generated. The access record contains billable content when a user selects the virtual channel from the correlation table. If the content source associated with the virtual channel is a private source viewable only by authorized consumers, the access record is used to bill an entity associated with the content source. If the content source associated with the virtual channel is a publicly accessible source, the access record is used to bill the user, figure 6 and page 14, last paragraph through page 15, first paragraph.

(6) Grounds of Rejection to be Reviewed on Appeal

(a) Claims 1 and 6 have been rejected under 35 U.S.C. §103 as being unpatentable over Matthews, III et al. (USPN 5,914,746, hereinafter "Matthews") in view of Stinebruner, USPN 6,133,910 and further in view of Breslauer et al., USPN 6,637,027.

(b) Claims 2, 4, and 5 have been rejected under 35 U.S.C. §103 as being unpatentable over Matthews, III et al. in view of Breslauer et al.

(c) Claims 7 and 9-11 have been rejected under 35 U.S.C. §103 as being unpatentable over Matthews, III et al. in view of Breslauer et al. and further in view of Watson, USPN 5,289,271.

(d) Claims 12-14 have been rejected under 35 U.S.C. §103 as being unpatentable over Matthews, III et al. in view of Watson and Linehan, USPP 2004/0249726.

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(7) Argument

As an initial matter, it is noted that according to the Patent Office, a new ground of rejection in an examiner's answer should be "rare", and should be levied only in response to such things as newly presented arguments by Applicant or to address a claim that the examiner previously failed to address, 69 Fed. Reg. 155 (August 2004), see, e.g., pages 49963 and 49980. Furthermore, a new ground of rejection must be approved by the Technology Center Director or designee and in any case must come accompanied with the initials of the conferees of the appeal conference, *id.*, page 49979.

Appellant notes that the SPE has approved the merits of the rejections. Accordingly, unless his prior review was only cursory, reopening prosecution is not expected.

(a) There is no prior art suggestion to combine the parental lock flag of Stinebruner, which is used to prevent children from accessing objectionable Web sites, in the relied-upon table of Matthews, which presents, as "virtual channels", only executable code sources for, e.g., executing an electronic program guide (EPG). Because an EPG is in effect an index of available stations but does not typically display content, objectionable or not, there is no reason to use the parental flag of Stinebruner in the virtual channel table of Matthews.

Admitting that Matthews fails to teach Web pages for its virtual channels, the examiner relies on Breslauer et al. and proposed to combine its Web sites into Matthews for "the stated advantage." Which stated advantage? Matthews is directed to executable code sources for executing an electronic program guide. Why is any advantage presumably stating that Web sites are nice of any relevance to Matthews, except in hindsight of Claim 1? Furthermore, using a particularly claimed data structure in an ITV with a particularly claimed data

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element to perform a particularly claimed function cannot be derived from references that simply suggest various disparate elements in a vacuum. What remains to be shown, to properly comply with the MPEP, is where the prior art suggests the particular combination of elements set forth in Claim 1.

For this observation, Appellant has been castigated for "attacking references individually." Appellant is unaware of how to discuss the shortcomings of the prior art without discussing the prior art by name. The legal principle of the cited boilerplate from the MPEP, as it is usually is, has been lost in application.

(b) Turning to Claim 2, the rejection is cast in nearly incoherent terms, but it appears to be the examiner's position, as best understood, that Matthews in some uncited spot discloses that channel numbers can be customized "to change the number to a familiar number, as would include telephone numbers." The Board can stop reading here, because the fallacy of the examiner's syllogism is so clear. Matthews never even mentions the word "telephone", much less does it suggest correlating a virtual channel with a telephone number. Because a user of Matthews can customize a channel number, and because a telephone number happens to be numeric, does not mean that Matthews teaches customization using telephone numbers.

(c) Considering Claim 7, the relied-upon portion of Watson discusses recording when a user is tuned to a non-virtual channel, for billing for conventional cable TV channels. It does not relate to virtual channels, much less to Web site-based virtual channels. Accordingly, if Watson were to be combined with Matthews as proposed, Claim 7 (which requires recording accessing of a Web site to render records containing billing

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information) would not result, but rather only the combined features taught in the references, namely, Matthews' list of virtual and non-virtual channels with the user being billed for the amount of time spent tuned to a non-virtual channel as taught by Watson.

The limitation of dependent Claim 11 has been rejected without evidentiary support but rather only what amounts to a conjecture of what would be obvious to the skilled artisan, and for that additional reason the rejection of Claim 11 should be reversed.

(d) If possible, the rejection of Claim 12 is even easier to reverse. The relied-upon references simply fail to teach or suggest billing the user for public sources and billing an entity associated with the content provider if the source is private. Paragraph 33 of Linehan et al. has been used in the almost indecipherable rejection in this regard but all the relied-upon paragraph teaches is that TV originators might want to share in profits made by advertisers. How that translates into a specific billing paradigm, much less the one recited in Claim 12, remains shrouded in mystery.

Respectfully submitted,



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APPENDIX A - APPEALED CLAIMS

1. A method for allowing access to at least one Web site using an interactive television, comprising the acts of:

establishing an access restriction table, the access restriction table including plural virtual channels, each virtual channel correlating to at least one Web site address;

making the access restriction table accessible to the television;

selectively enabling a consumer to access a Web site address using the interactive television by selecting a virtual channel; and

setting a restriction flag on at least one entry in the table, the flag indicating whether content associated with the entry can be displayed.

2. A method for correlating Web pages to virtual channels for display thereof on a television, comprising:

generating a table correlating plural Web addresses with respective virtual channel numbers;

receiving a user selection of a virtual channel number; and

accessing the table to selectively retrieve the address associated with the virtual channel number, such that content associated with the address can be displayed on the television, wherein at least one virtual channel number is a telephone number.

4. The method of Claim 2, wherein the table is stored at the television.

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5. The method of Claim 2, wherein the table is stored remote from the television and streamed thereto.

6. The method of Claim 2, further comprising setting a restriction flag on each entry in the table, the flag indicating whether content associated with the address of a selected virtual channel can be displayed.

7. An interactive television system, comprising:

at least one server having Internet addresses stored therein, each address being associated with a respective virtual channel number; and

at least one interactive television, the interactive television system server including a table for selectively allowing access to at least one Web site using the interactive television by selecting a virtual channel number, the interactive television comprising:

means for recording an accessing of a Web site to render at least one access record containing billing information.

9. The system of Claim 7, further comprising:
logic means for storing access records in a memory.

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10. The system of Claim 7, further comprising:

logic means for retrieving access records from the memory; and

logic means for determining whether an access record contains billable content.

11. The system of Claim 10, further comprising:

logic means for determining whether the access record contains content for private viewing or public viewing.

12. A method for billing for access to virtual channels, comprising the acts of:

providing at least one correlation table stored in an interactive television, the correlation table correlating at least one virtual channel with a respective content source;

for at least one virtual channel, generating an access record containing billable content when a user selects the at least one virtual channel from the correlation table;

if the content source associated with the at least one virtual channel is a private source viewable only by authorized consumers, using the access record to bill an entity associated with the content source; and

if the content source associated with the at least one virtual channel is a publicly accessible source, using the access record to bill the user.

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13. The method of Claim 12, wherein at least one virtual channel correlates to one and only one Web site address.

14. The method of Claim 12, wherein at least one virtual channel number is established by a consumer.

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APPENDIX B - EVIDENCE

None (this sheet made necessary by 69 Fed. Reg. 155 (August 2004), page 49978.)

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APPENDIX C - RELATED PROCEEDINGS

None (this sheet made necessary by 69 Fed. Reg. 155 (August 2004), page 49978.)

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